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7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**
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10 WESLEY COTTON,

11 Plaintiff,

12 v.

13 MEDINA, *et al.*,

14 Defendants.

15 Case No. 1:22-cv-00568-JLT-EPG (PC)

16 FINDINGS AND RECOMMENDATIONS
17 RECOMMENDING THAT PLAINTIFF'S
18 MOTION FOR DEFAULT JUDGMENT BE
19 DENIED

20 (ECF No. 103)

21 OBJECTIONS, IF ANY, DUE WITHIN
22 THIRTY (30) DAYS

23 Plaintiff Wesley Cotton (Plaintiff) is proceeding *pro se* and *in forma pauperis* in this
24 civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff alleges that while he was in a
25 locked caged enclosure in the B yard of Corcoran State Prison (CSP), toxic gas from cannisters
26 used to break up a fight in the C yard drifted over and injured him. Plaintiff alleges that
Defendant Medina failed to protect Plaintiff from the gas and Plaintiff suffered from exposure.
(*See generally* ECF No. 1).

Before the Court is Plaintiff's motion for default judgment made on the ground that Defendants' attorney, Gregory Martin Cribbs, was not licensed to practice law between July 2, 2024, to August 6, 2024.

Upon review, the Court recommends that Plaintiff's motion for default judgment be denied.

1 **I. BACKGROUND**

2 **A. Order to Show Cause Regarding Attorney Gregory Cribbs**

3 On October 11, 2024, this Court issued an order to show cause directed towards
4 Gregory Cribbs (Cribbs), one of the attorneys who represented Defendants at that time. (ECF
5 No. 99). According to the California State bar website, Cribbs was not eligible to practice law
6 from July 2, 2024, to August 6, 2024. (*Id.* at p. 2). During that time period, Cribbs had filed a
7 motion for extension to file a reply in support of Defendants' motion for summary judgment
8 before this Court, which included a declaration sworn under penalty of perjury where he stated
9 he was "an attorney admitted to practice in California and before this Court." (ECF No. 81, at
10 p. 3).

11 In response to the order to show cause, Cribbs filed a declaration stating he was listed as
12 ineligible because he failed to timely comply with the State bar's new Client Trust Account
13 Protection Program (CTAPP) and failed to timely pay the CTAPP noncompliance fee. (ECF
14 No. 101, Cribbs Declaration). Cribbs stated his CTAPP noncompliance was based on his
15 mistaken belief that CTAPP requirements did not apply to government attorneys, and when he
16 completed the CTAPP requirement he was not aware he had to pay a noncompliance fee for
17 late filing. (*Id.* ¶¶ 4-5). Cribbs stated he was alerted to his change in status on August 6, 2024,
18 and corrected the issue by paying the fee on the same day, and his status was returned to
19 "active". (*Id.* ¶¶ 7-8).

20 Based on counsel's response, this Court discharged the order to show cause on October
21 21, 2024. (ECF No. 102).

22 **B. Plaintiff's Motion for Default Judgment**

23 On October 30, 2024, Plaintiff filed a motion for default judgment. (ECF No. 103).
24 Plaintiff argues that default judgment should be entered against Defendants because they have
25 "persistently displayed dishonesty, misconduct, and an unwillingness to resolve this matter
26 equitably." (*Id.* at p. 1). Specifically, Plaintiff argues that default judgment is warranted
27 because "Attorney General Gregory Martin Cribbs, representing the Defendants, engaged in
28 unlawful and unethical conduct by practicing law without a valid license. Despite obtaining an

1 extension of time under false pretenses, Cribbs submitted evidence and motions that should be
2 declared void under the fruit of the poisonous tree doctrine. This deliberate fraud upon the court
3 compromises the entire defense case, rendering all motions filed during this period as null and
4 void.” (*Id.* at p. 2).

5 **C. Cribbs No Longer Representing Defendants**

6 On November 18, 2024, Defendants filed a notice stating that counsel assigned to
7 represent Defendants had changed, and Cribbs was terminated from the case. (ECF No. 107).

8 **II. LEGAL STANDARD**

9 **A. Default Judgment**

10 Rule 55 of the Federal Rule of Civil Procedure details the steps for entry of default and
11 default judgment. First, under Rule 55(a), “[w]hen a party against whom a judgment for
12 affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by
13 affidavit or otherwise, the clerk must enter the party’s default.” Then, pursuant to Rule 55(b) a
14 court may order default judgment following the entry of default. *See also Siegler v. Sorrento*
15 *Therapeutics, Inc.*, No. 318CV01681GPCNLS, 2018 WL 6303728, at *1 (S.D. Cal. Dec. 3,
16 2018) (“A clerk’s entry of default is a necessary predicate to obtaining default judgment.”);
17 *Tracy v. CEO, Successor Deutsche Nat. Tr. Co.*, No. 3:11-CV-0436-LRH-VPC, 2011 WL
18 6400311, at *1 (D. Nev. Dec. 20, 2011) (“In order to obtain a default judgment, a party must
19 first obtain a clerk’s entry of default which can only be obtained by establishing, through an
20 affidavit, that a defendant has failed to plead or otherwise defend itself in the action.”).

21 “The district court’s decision whether to enter a default judgment is a discretionary
22 one.” *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980).

23 “Factors which may be considered by courts in exercising discretion as to the entry of a
24 default judgment include: (1) the possibility of prejudice to the plaintiff, (2) the merits of
25 plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake
26 in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default
27 was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil
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1 Procedure favoring decisions on the merits.” *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th
2 Cir. 1986). “[D]efault judgments are ordinarily disfavored.” (*Id.* at 1472).

3 **III. ANALYSIS**

4 Plaintiff’s motion does not provide a basis for default judgment against Defendants.
5 Defendants have not “failed to plead or otherwise defend” the lawsuit, as required by Federal
6 Rule of Civil Procedure 55.

7 Nor does the Court find that default against defendants would be an appropriate
8 sanction for counsel’s conduct. While the Court appreciates the seriousness of appearing in
9 court while on active status, Cribbs adequately explained that this was due to an error, which
10 has been rectified. Moreover, counsel’s sole filing during this time period was a request for
11 extension of time.

12 Finally, there is no basis to punish Defendants for counsel’s error.

13 Accordingly, the Court recommends that Plaintiff’s motion for default judgment be
14 denied.

15 **IV. CONCLUSION AND RECOMMENDATION**

16 Accordingly, IT IS RECOMMENDED that:

17 1. Plaintiff’s motion for default judgment (ECF No. 103) be DENIED.

18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty days
20 after being served with these findings and recommendations, any party may file written
21 objections with the court. Such a document should be captioned “Objections to Magistrate
22 Judge’s Findings and Recommendations.” Any objections shall be limited to no more than
23 fifteen pages, including exhibits. Any reply to the objections shall be served and filed within
24 fourteen days after service of the objections.

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The parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: July 8, 2025

/s/ Eric P. Groj